IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Writ Petition No. 1313 of 2004 (M/S)

Har Prasad Shah,
S/o late Shri K.L. Shah,
R/o Village Haripur Karnal,
Ward Teripulia,
Nainital Raod,
P.O.&Tehsil Haldwani
District Nainital. **.....** **Petitioner**

Versus

1. Addl. Chief Revenue Commissioner, Uttaranchal, Nainital.

2. Addl. Commissioner (Admn.) Kumaun, Nainital.

3. Addl. Collector, Nainital.

4. Naib Tehsildar Haldwani,
District Nainital

..... **Respondents**

Mr. Arvind Vashishth, learned counsel for the petitioner.
Mr. B.D. Kandpal, learned Standing Counsel for the respondents.

Hob'ble Prafulla C.Pant, J.

Heard learned counsel for the petitioner and learned Standing Counsel .

2. By means of this writ petition, moved under Article 227 of the Constitution of India, the petitioner has challenged the order dated 17.11.1997 passed in case No. 30 (1995-56), order dated 24.03.1999 passed by Additional Collector, Nainital in appeal No. 52/4 (1998-99), order dated 10.12.1999 of Additional Commissioner, Kumaun, Nainital, passed in revision No. 188/110 (1998-1999) and the order passed in the second revision by the respondent No. 1.

3) The petitioner appears to have filed a suit under Section 34 and 35 of the Land Revenue Act, 1901 for mutation of his name as bhumidhar. The courts below have concurrently found that the petitioner has not been declared as bhumidhar so far, and merely on the basis of the alleged possession he cannot be recorded as bhumidhar in respect of land in dispute.

4) Learned counsel for the petitioner drew my attention to the judgment and order dated 26.10.1988 passed by civil court in civil suit no. 141 of 1980. I have gone through said judgment. Civil Court has no jurisdiction to declare a person bhumidhar nor there is finding in this regard. The petitioner should have first got himself declared bhumidhar by filing a suit no. 229 B of U.P. Z.A. & L.R Act, 1950 before the revenue authorities and only after getting the declaration, he could have sought mutation as bhumidhar.

5) Learned counsel for the petitioner also argued that the petitioner claims title by operation of law in view of Section 230-A(a) of the U.P. Z.A. & L.R. Act, 1950 read with its section 240B. The said point has also been discussed by learned trail court, wherein in has been mentioned that the land is recorded in the name of the Avas Vikas Parishad and before that it was in possession with one Har Prasad Shah and not the petitioner.

6) In the circumstances, the petition is devoid of merits and is dismissed in limine without expressing any opinion as to the final merits of suit, if any field in future under section 229 B of the aforesaid Act, by the petitioner.

(Prafulla C. Pant, J.)

Dt.16.12.2004.
Sj.